

**[CHAPTER 334D]
DIVERSION PROGRAM FOR CHEMICALLY
DEPENDENT NURSES**

SECTION

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[§334D-1] Findings and purpose. Nursing is a stressful occupation and some nurses may be tempted to escape the pressures of their job by consuming alcohol or taking drugs. Many times nurses do not realize that they have developed a chemical dependency problem, and that they need help before the problem gets worse.

The legislature finds that there is no formal peer program to assist nurses who have developed a chemical dependency problem. There is, however, an informal peer program operated by the Hawaii Nurses Association. This is a peer assistance program for nurses who have not been reported to the department of commerce and consumer affairs because of a chemical dependency problem. The diversion program created by this chapter is a component of the Hawaii Nurses Association's peer assistance program, and is intended for nurses who have been reported to the department of commerce and consumer affairs.

The purpose of this chapter is to establish a diversion program for nurses with chemical dependency problems and to place the program under the auspices of the board of nursing for oversight purposes. It is the intent of this chapter that nurses who are abiding by the terms and conditions of the diversion program shall not be subject to further disciplinary action for their chemical dependency problems by the board of nursing.

[§334D-2] Definitions. As used in this chapter, unless the context requires otherwise:

"Board" means the board of nursing.

"Chemically dependent" means a condition wherein a nurse's cognitive, interpersonal, or psychomotor skills are affected by the habitual or intemperate use of alcohol or drugs, or both.

"Diversion program" means a program administered by professionals to assist chemically dependent nurses in obtaining evaluation, counseling, monitoring, and ongoing support for rehabilitative purposes.

"Nurse" means a person who has been or is currently licensed under chapter 457.

"Peer assistance program" means a program administered by professionals for the purpose of assisting nurses who are chemically dependent in obtaining evaluation, counseling, monitoring of progress, and ongoing support for rehabilitative purposes.

"Professional association" means a national or statewide association or committee of professionals, or a nonprofit organization operated in support of a professional association that is recognized by the board and designated to administer and monitor the diversion program.

[§334D-3] Diversion program. (a) There is established a diversion program for chemically dependent nurses, which shall be administered and monitored by a professional association.

(b) The board shall adopt rules in accordance with chapter 91 setting forth the requirements for program approval and maintenance.

(c) Participation in the diversion program shall be voluntary.

(d) If a nurse is subject to penalties, including revocation, suspension, or limitation of license and fines, and desires to effect a compromise settlement, the regulated industries complaint office and the nurse may enter into a settlement agreement subject to approval and order of the board and acceptance by the diversion program.

(e) The names of nurses who fail to comply with the terms and conditions of the diversion program shall be reported to:

(1) The executive secretary of the board; and

(2) The regulated industries complaints office;

within three business days after the failure to comply becomes known to the individuals monitoring the nurse and the individual designated by the professional association to report the failure to comply.

[§334D-4] Civil immunity of third persons. (a) A person, entity, professional association, peer assistance program, diversion program, or employer who, in good faith, reports information or takes action in connection with a diversion program or peer assistance program, shall be immune from civil liability for reporting the information or taking the action.

(b) A person, entity, or organization that employs a chemically dependent nurse in connection with the nurse's rehabilitation shall be entitled to civil immunity under this section while the nurse is participating in the peer assistance program or diversion program unless the person, entity, or organization:

(1) Knows or should have known that the nurse is or was incapable of performing the job functions involved; or

(2) Fails to take reasonable precautions to monitor the nurse's job performance.

(c) Any professional association, person, entity, or employer acting under this chapter shall be presumed to have acted in good faith in actions relating to the peer assistance program or diversion program. A person alleging a lack of good faith shall have the burden of proof on this issue.

(d) The immunity provided by this section shall be in addition to other immunities provided by law and shall be liberally construed to accomplish the purpose of this chapter.

[§334D-5] Records. (a) Nurses who comply with all the terms and conditions of the diversion program shall not be reported to the National Council of State Board of Nursing's Data Bank unless sanctions have been taken.

(b) All records of a nurse participating in a peer assistance program that do not involve reporting to, or disciplinary action by, the board of nursing or the regulated industries complaints office shall be privileged and shall not be subject to discovery or subpoena.